

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

FREDDIE FOUNTAIN §
v. § CIVIL ACTION NO. 6:13cv958
RICK THALER, ET AL. §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND DENYING MOTION FOR CLASS CERTIFICATION

The Plaintiff Freddie Fountain, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights during his confinement in the Texas Department of Criminal Justice, Correctional Institutions Division. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Fountain has filed two previous motions asking that this lawsuit be certified as a class action under Fed. R. Civ. P. 23. These motions have been denied. Fountain then filed a third such motion, arguing that the majority of his claims pertain to large number of prisoners and not him alone, his injuries resulted from issues affecting the class, he has met the requirements of numerosity, commonality, and typicality, he will fairly and adequately represent the interests of the class, declaratory and injunctive relief is appropriate, and the court is obligated to appoint class counsel.

After review of the motion, the magistrate judge issued a report recommending that Fountain's third motion for class certification be denied. Fountain has filed objections to this report. The Court has conducted a *de novo* review of those portions of the magistrate judge's proposed findings and recommendations to which objection was made. *See* 28 U.S.C. §636(b)(1) (district judge shall "make a *de novo* determination of those portions of the report or specified proposed

findings or recommendations to which objection is made.”) Upon such *de novo* review, the Court has concluded that the report of the magistrate judge is correct and the Plaintiff’s objections are without merit. It is accordingly

ORDERED that the Plaintiff’s objections are overruled and the report of the magistrate judge (docket no. 96) is **ADOPTED** as the opinion of the district court. It is further

ORDERED that the Plaintiff’s third motion for class certification (docket no. 48) is **DENIED**.

SIGNED this 28th day of January, 2015.



MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE